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James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

Original via UPS -- Copy via Electronic Mail

January 5, 2021

Mr. Charles Maguire, Director
Water Quality Protection Division (6WQ)
U. S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Re: State Certification Seven Springs State Fish Hatchery, NM0030112

Dear Director Maguire:

Enclosed, please find the state certification for the following proposed National Pollutant Discharge Elimination System (NPDES) permit NM0030112, Seven Springs State Fish Hatchery. If any, comments and conditions are enclosed on separate sheets.

The U.S. Environmental Protection Agency (USEPA) proposes to regulate discharges under the above-referenced NPDES Individual Permit. A state Water Quality Certification is required by the federal Clean Water Act (CWA) Section 401 to ensure that the action is consistent with state law (New Mexico Water Quality Act, New Mexico Statutes Annotated (NMSA) 1978, §§ 74-6-1 to -17) and complies with State of New Mexico Water Quality Standards, Water Quality Management Plan and Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and Antidegradation Policy.

Pursuant to State regulations for permit certification (Section 20.6.2.2001 New Mexico Administrative Code (NMAC)), USEPA jointly with the New Mexico Environment Department (NMED) issued a public notice of the draft permit and announced a public comment period posted on the NMED web site at <https://www.env.nm.gov/surface-water-quality/public-notices/> on November 21, 2020. The NMED public comment period ended on December 21, 2020. NMED did not receive any comments.

Sincerely,

Shelly Lemon, Bureau Chief
Surface Water Quality Bureau

Cc:

Ms. Evelyn Rosborough, USEPA (6WDPN) via e-mail
Mr. Brent Larsen, USEPA (6WDPE) via e-mail
Mr. Jim Afghani, USEPA (6WDPE) via e-mail
Mr. Mike Sloane, Director NMDGF via e-mail
Mr. Kirk Patten, Fisheries Chief, NMDGF via e-mail Mr. Ken McQueen, Regional Administrator

Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202-2733

January 5, 2021

STATE CERTIFICATION

RE: Seven Springs State Fish Hatchery – NPDES Permit No. NM0030112

Dear Regional Administrator McQueen:

The Cabinet Secretary of the New Mexico Environment Department (NMED) has delegated signatory authority for state certifications of federal Clean Water Act permits to the Surface Water Quality Bureau Chief. NMED examined the proposed NPDES permit referenced above. The following conditions are necessary to assure compliance with the applicable provisions of the Clean Water Act Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law. Compliance with the terms and conditions of the permit and this certification will provide reasonable assurance that the permitted activities will be conducted in a manner which will not violate applicable water quality standards and the water quality management plan and will be in compliance with the antidegradation policy.

The State of New Mexico

- (X) certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law
- () certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of the following conditions in the permit (see attachments)
- () denies certification for the reasons stated in the attachment
- () waives its right to certify

In order to meet the requirements of State law, including water quality standards and appropriate basin plan as may be amended by the water quality management plan, each of the conditions cited in the draft permit and the State certification shall not be made less stringent, unless changes are in response to formal comments received by EPA and discussed with NMED prior to the finalization of the draft permit.

The Department reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan.

Please contact Sarah Holcomb at (505) 827-2798, if you have any questions concerning this certification. Comments and conditions pertaining to this draft permit are attached.

Sincerely,

Shelly Lemon, Bureau Chief
Surface Water Quality Bureau

**State of New Mexico Comments and Conditions on the Proposed NPDES Permit
Seven Springs State Fish Hatchery
NPDES Permit No. NM0030112
January 5, 2021**

The following revisions are necessary to ensure that discharges allowed under the National Pollutant Discharge Elimination System (NPDES) permit protect State of New Mexico water quality standards (WQS) adopted in accordance with Section 303 of the Clean Water Act (CWA) and the New Mexico Water Quality Act [NMSA 1978, §§ 74-6-1 to -17]. State of New Mexico (State) WQS are published in Title 20, Chapter 6, Part 4 of the New Mexico Administrative Code (20.6.4 NMAC), *Standards for Interstate and Intrastate Surface Waters*, as amended by the New Mexico Water Quality Control Commission (WQCC) on May 22, 2020 and approved by the U.S. Environmental Protection Agency (EPA) on July 24, 2020. Additional state WQS are published in Title 20, Chapter 6, Part 2 of the New Mexico Administrative Code (20.6.2 NMAC), *Ground and Surface Water Protection*, as amended by the WQCC on December 21, 2018.

NPDES regulations at 40 CFR 122.44(d)(1)(i) require that permit "...limitations must control all pollutants or pollutant parameters... which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard..."

40 CFR Part 124.53(e) states that, "State certification shall be in writing and shall include: (1) Conditions which are necessary to assure compliance with the applicable provisions of CWA Sections 208(e), 301, 302, 303, 306 and 307 and with appropriate requirements of State law..."

Conditions of Certification:

1. No conditions of certification.

Comments that are not Conditions of Certification:

1. The general prohibition against backsliding found in Section 402(o)(1) of the Act contains several exceptions. Specifically, under Section 402(o)(2), a permit may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant *if*:

(B)(i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or (ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B) of this section;

NMED concurs with EPA on the removal of limitations for aluminum at Outfall 001. This is based on a sampling study conducted by the New Mexico Department of Game and Fish at the source of each artesian spring in conjunction with effluent samples. The study shows that aluminum concentrations in source water are consistently higher than the discharged wastewater. In accordance with 40 CFR 122.45(g), similar facilities around the state do not exhibit aluminum water quality exceedances because an aluminum source material is not present in their process.

End of Comments that are not Conditions of Certification